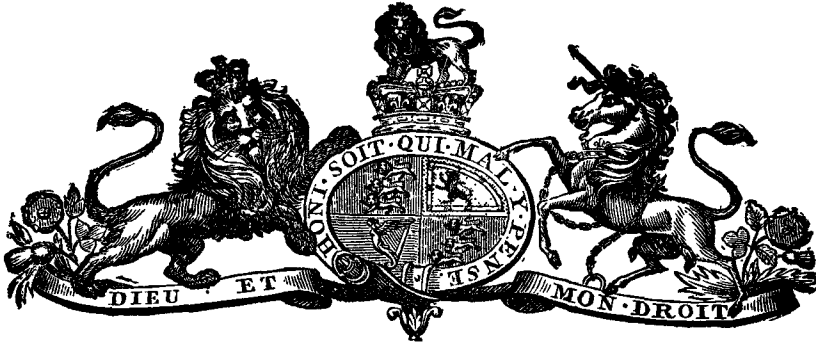


## NEW ZEALAND.



TRICESIMO QUINTO

## VICTORIÆ REGINÆ.

No. L.

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## ANALYSIS.

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| <p>Title.</p> <p>Preamble.</p> <p>1. Short Title.</p> <p>2. Workman suing contractor may obtain certificate of cause of debt. First Schedule.</p> <p>3. If debt to workman be due for work for which money is due to contractor workman may by serving notice require payment thereof. Second Schedule.</p> <p>4. Service of notice to operate as assignment to workman of debt due to contractor.</p> <p>5. After service debt to workman to be paid by contractee out of moneys due to contractor. Third Schedule.</p> <p>6. Debts of workmen serving notice within seven days of first notice to be paid rateably without priority.</p> | <p>7. If contractee fail to pay workman may sue for and recover moneys due to contractor.</p> <p>8. On satisfaction of debt due to workman assignment of debt due to contractor to cease to operate.</p> <p>9. Workman upon payment shall sign a discharge in the form of the Third Schedule. Third Schedule.</p> <p>10. After notice of action served on contractee by workman moneys may be attached. Fourth Schedule.</p> <p>11. Leave to serve notice how to be obtained.</p> <p>12. Plaintiff how to proceed after judgment.</p> <p>13. Contractor to be liable for wages due by subcontractor.</p> <p>14. Act not to prejudice other remedies of workman or vary rights between contractor and contractee.</p> |
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AN ACT for better securing the Payment of Debts due to Workmen. Title.  
[14th November 1871.]

**W**HEREAS it is expedient to enable persons employed upon work in which a lien over the thing worked on cannot be acquired and for which their employer has failed to pay them to obtain payment from moneys due to their employer for the work which they have done: Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows (that is to say):—

1. The Short Title of this Act shall be “The Contractors Debts Act 1871.” Short Title.

2. If in any proceeding in any Court of competent jurisdiction any sum shall be found due and payable by the defendant for work and labour and the character of the work and the locality in which it has been done shall appear from the evidence the presiding Judge or Justice shall upon the plaintiff’s application sign and deliver to him a certificate of the cause of debt in the form in the First Schedule Workman suing contractor may obtain certificate of cause of debt.  
First Schedule.

*Contractors Debts.*

which for the purposes of this Act shall be conclusive but no such certificate shall be given if the work appears to have been done upon a movable chattel of such a description that it would be practicable for a workman to have a lien thereon by retaining the same in his actual possession and if the sum so found due as aforesaid shall be in respect of daily weekly or monthly wages and shall exceed the amount of sixty days' wages such certificate shall be given for the amount of sixty days' wages and no more.

If debt to workman be due for work for which money is due to contractor workman may by serving notice require payment thereof.

3. If the work done be work or part of or incidental to work for the doing of which any moneys may be due or accruing due to the defendant in such proceeding (hereinafter referred to as the contractor) under any express or implied contract with any third person the plaintiff in such proceeding (hereinafter referred to as the workman) may obtain payment of the sum mentioned in the certificate out of such moneys by serving on such third person (hereinafter referred to as the contractee) a notice in the form in the Second Schedule together with a copy of the certificate issued to him as aforesaid.

Second Schedule.

Service of notice to operate as assignment to workman of debt due to contractor.

4. Upon service as aforesaid all moneys due or to accrue due as aforesaid from the contractee to the contractor to the amount of the workman's debt specified in the certificate shall be deemed to be effectually assigned by the contractor to the workman but subject to any prior assignment thereof under this Act binding upon the contractor and contractee at the time of service being effected upon the contractee as aforesaid.

After service debt to workman to be paid by contractee out of moneys due to contractor.

Third Schedule.

Debts of workmen serving notice within seven days of first notice to be paid rateably without priority.

5. After such service and until a discharge for the workman's said debt in the form in the Third Schedule shall have been produced to and a copy thereof left with the contractee he shall satisfy such debt out of the moneys assigned as aforesaid by paying to the workman upon his application the said moneys as they become due and payable.

6. The priority of assignments as aforesaid shall be determined by the order of service of notice on the contractee but all notices served within seven days of the first notice served in respect of the same contractor in any one year shall be deemed to be served at the same time for the purpose of securing the equal distribution of moneys due and accruing due to the contractor amongst all workmen serving notice within such period of seven days rateably in proportion to the amount of their respective debts until payment of all in full and until such period of seven days has expired no workman's debt shall be paid by the contractee out of such moneys.

If contractee fail to pay workman may sue for and recover moneys due to contractor.

7. If the contractee shall fail to pay as aforesaid the workman may sue for and recover in his own name the moneys assigned as aforesaid as if the assignment of the debt due to the contractor were valid at law and by any proceeding which the contractor might have taken had there been no assignment under this Act subject to any defence which would have been available against the contractor in such proceeding except a defence founded on the act of the contractee after service upon him of the copy certificate and notice aforesaid.

On satisfaction of debt due to workman assignment of debt due to contractor to cease to operate.

8. Upon satisfaction by any other means than as aforesaid of the whole or part of the workman's debt mentioned in any certificate under this Act or on the setting aside of the judgment or order in respect of which any such certificate shall have been given any assignment effected under this Act in respect of such debt shall in the whole or in part cease to be operative but without prejudice to any *bonâ fide* payment or other dealing by the contractee on the footing of such assignment prior to notice and sufficient evidence of such satisfaction or setting aside having been given to him and so far as may be necessary to such payment or dealing such assignment shall continue in force.

*Contractors Debts.*

9. The workman shall upon the request of the contractor or contractee paying to him the debt specified in the certificate sign a discharge therefor in the form in the Third Schedule and any workman refusing to sign a discharge as aforesaid if tendered for signature at the time of payment shall forfeit and pay to the contractor or contractee so tendering a sum equal to the amount of the payment such penalty to be recoverable in a summary way before Justices.

Workman upon payment shall sign a discharge in the form of the Third Schedule. Third Schedule.

10. The workman when or at any time after he takes out a summons or plaint against the defendant may by leave of the Court in which the summons or plaint is taken out or of a Judge or Magistrate thereof serve a notice of the action upon the contractee specifying the sum sued for. Such notice shall be in the form contained in the Fourth Schedule or to the effect thereof and thereupon any moneys due or accruing due by the contractee to the defendant or so much thereof as the Court or Judge shall order shall be attached and shall remain in the hands of the contractee until judgment be given in the action unless the Court or a Judge thereof shall otherwise order on the application of the contractee.

After notice of action served on contractee by workman moneys may be attached.

Fourth Schedule.

11. Leave to serve such notice may be obtained on the *ex parte* application of the workman and he shall in such application prove on oath to the satisfaction of the Court or a Judge thereof that the sum sued for is due and owing by the contractor.

Leave to serve notice how to be obtained.

12. The plaintiff in the event of his obtaining judgment against the defendant shall then proceed by further notice in the form of the Second Schedule hereto as before provided.

Plaintiff how to proceed after judgment.

13. A contractor who shall sublet any part of the work shall be responsible to the extent provided for by this Act for the wages of the workmen employed by a sub-contractor and a workman employed by a sub-contractor may proceed against the contractor as in this Act provided as if he had been directly employed by him.

Contractor to be liable for wages due by sub-contractor.

14. Nothing in this Act shall be construed to prejudice any other remedy which the workman may have against the contractor in respect of the debt due to him or save as expressly provided to affect any right subsisting under any contract as aforesaid or otherwise between the contractor and contractee.

Act not to prejudice other remedies of workman or vary rights between contractor and contractee Sections 2 3 5 and 9.

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SCHEDULES.

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FIRST SCHEDULE.

In pursuance of the Contractors Debts Act I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ the sum of £ \_\_\_\_\_ was in a proceeding before me ascertained to be due and payable by [Name of defendant] to [Name of plaintiff] for work and labour done by him as [State generally the actual employment of the plaintiff e.g. bricklayer labourer shipwright] upon [Describe generally the thing upon or in respect of which the plaintiff has been employed e.g. the house No. 22 Street. No. 1 for Railway. The brig "Dart".]

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

A.B.  
Presiding Judge or Magistrate.

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*Contractors Debts.*


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## SECOND SCHEDULE.

To [*Name and addition of Contractee*].

TAKE notice that the work specified in the certificate a copy of which is served herewith having been done in performance of an agreement entered into with you by [*Name and addition of contractor*] who has failed to pay me for such work you are hereby required under the Contractors Debts Act to pay me on demand the amount specified in the certificate out of any moneys now due or from time to time becoming due from you to the said [*Name of contractor*] under the said agreement and on your failing so to do you will under the said Act be liable to legal proceedings at my suit to obtain payment.

As witness my hand this            day of            one thousand eight hundred  
and

C.D.  
Workman.

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## THIRD SCHEDULE.

I HEREBY acknowledge that the debt of £            certified to be due to me by            in  
a certificate issued under the Contractors Debts Act and dated the            day of  
one thousand eight hundred and            has been fully discharged.

As witness my hand this            day of            one thousand eight hundred  
and

C.D.  
Workman.

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## FOURTH SCHEDULE.

In the            Court }  
                 District. }    Between A.B. Plaintiff and C.D. Defendant.

To E.F. of

By leave of this Court [*or of G.H. a Judge of this Court*] and on the application of A.B. the plaintiff you are hereby required to retain in your hands until judgment herein or as this Court otherwise orders all moneys due or accruing due from you to the said C.D. or if the same shall exceed            pounds then            pounds thereof.

Dated this            day of            18 .

Judge of the            Court.

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